

**Tuesday, December 11, 2007**

The Board met at its offices at 450 N Street, Sacramento, at 9:40 a.m., Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Vivian Fontenot, 391245

2003, \$628.65 Claim for Refund

For Appellant:

Rita Madgett-Scott, Representative

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent properly included pension and annuity income in taxable income for 2003.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Mr. Leonard recommended that the Franchise Tax Board instruct its call center staff to refer callers to publications on the Internet and advise them of written tax advice.

John Nelson and Ivy C. Nelson, 393411

2003, \$955.00 Claim for Refund

For Appellant:

Rita Madgett-Scott, Representative

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown error in respondent Franchise Tax Board's disallowance of their deduction of pension and annuity income from California Adjusted Gross Income.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Nemat Maleksalehi and Maryam Maleksalehi, 395817

2001, \$115,870.00 Claim for Refund

For Appellant:

Jerome A. Bellotti, CPA

Nemat Maleksalehi, Taxpayer

For Franchise Tax Board:

Raul Escatel, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown that they are entitled to deduct certain expenses that they paid in connection with a plea bargain with the federal government.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.1)

Action: The Board deferred consideration of this matter and ordered further briefing.

Exhibits to these minutes are incorporated by reference.

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The Board recessed at 11:10 a.m. and reconvened at 1:30 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**SALES AND USE TAX APPEALS HEARINGS****AADIJ Investment, Inc., 334276 (GH)**

1-1-03 to 11-16-05, \$36,838.02 Successor Liability

For Claimant:

Jayesh Parikh, Taxpayer

Jayant C. Trivedi, CPA

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether claimant is a successor to 1298 Montague.

Whether claimant has established reasonable cause such that it should be relieved of the penalties incurred in 1298 Montague.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the claim be submitted for decision.

**Vilumina M. Rico, 318330, 345435 (KH)**

4-1-02 to 9-30-02, \$2,714.40 Tax, \$271.44 Negligence Penalty, \$271.44 Double Amnesty Negligence Penalty

10-1-02 to 3-31-05, \$31,257.37 Tax, \$3,290.62 Penalties

For Petitioner:

Larry Frederick, Representative

Pedro Rico, Witness

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that the measure of unreported taxable sales is excessive because the bank deposits used to calculate the measure included personal income unrelated to taxable sales.

Whether petitioner is negligent.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**John Richard Dudley, 253691 (KH)**

7-1-00 to 6-30-03, \$18,540.12 Tax, \$6,464.31 Negligence Penalty

For Petitioner:

John Dudley, Taxpayer

For Sales and Use Tax Department:

Christine Bisauta, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is entitled to further adjustments to the unreported measure of tax based on missing our unaccounted for Department of Motor Vehicles Reports of Sales.

Whether claimant is entitled to a larger bad debt deduction.

Whether petitioner was negligent.

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Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board. Additional time will be allowed as needed. The Department is to subpoena tax records from the petitioner's accountant if necessary.

The Board recessed at 2:35 p.m. and reconvened at 2:40 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD DECEMBER 11, 2007**

Vivian Fontenot, 391245

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

John Nelson and Ivy C. Nelson, 393411

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**SALES AND USE TAX APPEALS HEARING**

Aerolease of America, Inc., 282309, 296191 (UT)

2-26-02, \$1,650.00 Tax

2-28-02, \$1,650.00 Tax

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the amounts petitioner paid to Mr. Aarvik for each aircraft was for financing (a loan), rather than a purchase.

Action: The Board deferred consideration of this matter to the next day.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD  
DECEMBER 11, 2007**

Vilumina M. Rico, 345435, 318330 (KH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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**SALES AND USE TAX APPEALS HEARING**

Richard Earl O'Rourke, 216557 (BH)

May 11, 2000, \$50,205.01 Tax

For Petitioner:

Waived Appearance

For Sales and Use Tax Department:

Robert, Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner's purchase of a vessel is subject to use tax measured by the purchase price.

Whether the purchase of the vessel should not be subject to tax because the vessel qualifies as returned merchandise.

Whether the purchase of the vessel should not be subject to tax because the vessel was returned to the dealer as defective merchandise, and thus, petitioner is entitled to defective merchandise deduction.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD  
DECEMBER 11, 2007**

AADIJ Investment, Inc., 334276 (GH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the penalty be deleted, otherwise denied the claim as recommended by the Appeals Division.

The Board adjourned at 2:46 p.m.

*The foregoing minutes are adopted by the Board on February 1, 2008.*Note: The following matters were removed from the calendar prior to the meeting: *Rochelle M. Dorfler, 306426*; and, *H.J. Heinz Company and Subsidiaries, 311701*.